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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

23 Cr. 251 (AKH)

6 CHARLIE JAVICE and OLIVIER
7 AMAR,

8 Defendants.

9 -----x Conference

10 New York, N.Y.
11 January 18, 2024
12 2:45 p.m.

13 Before:

14 HON. ALVIN K. HELLERSTEIN,

15 District Judge

16 APPEARANCES

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19 Southern District of New York

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01I3JAVC

1 MS. WUERTZ: Good afternoon. We're here on behalf of
2 JPMorgan Chase.

3 THE COURT: We have Dina McLeod for the government and
4 colleagues. Mr. Nitze and colleagues for Charlie Javice, and
5 Buckley and colleagues for defendant Amar. And for Morgan, we
6 have Ms. Wuertz and two colleagues.

7 MS. WUERTZ: Yes, your Honor we have some different
8 colleagues here today.

9 THE COURT: You would like to confuse me. So you got
10 some good news for me?

11 MS. WUERTZ: Not entirely, your Honor.

12 THE COURT: Oh.

13 MS. WUERTZ: Good afternoon. This is Allison Wuertz
14 from Hogan Lovells on behalf of nonparty JPMorgan Chase N.A.

15 MR. HUNT: Thomas Hunt from Hogan Lovells.

16 MR. REGAN: William Regan from Hogan Lovells.

17 MS. COCHRANE: Elizabeth Cochrane from Hogan Lovells.

18 MR. NITZE: And for Charlie Javice you have Sam Nitze
19 and Sara Clark. Good afternoon.

20 MR. BUCKLEY: On behalf of Mr. Amar, your Honor, you
21 have Sean Buckley, Steven Kobre, and Alexandria Swette.

22 THE COURT: Good afternoon.

23 Ms. Wuertz.

24 MS. WUERTZ: Would you like me to go to the podium?

25 THE COURT: Please.

01I3JAVC

1 MS. WUERTZ: Good afternoon, your Honor. So,
2 following the hearing yesterday, JPMorgan and defendants did
3 work to try to come to an agreement on the individuals who
4 would fall within the control group definition that your Honor
5 provided yesterday.

6 Defendants provided an initial list of 11 individuals.
7 JPMorgan provided its own list of 10 individuals. There was an
8 overlap of three people on those two lists.

9 After the parties --

10 THE COURT: You can agree on three people and disagree
11 on eight?

12 MS. WUERTZ: We're disagreeing on closer to 18 I
13 guess.

14 But subsequent to those initial lists, the defense
15 counsel came back, they said they would agree to add everybody
16 from our list, minus one person, and then they also wanted to
17 add seven additional people that appeared on their original
18 list. So they left one person off their list.

19 But at the moment, JPMorgan doesn't view the
20 individuals that they wish to add as consistent with the
21 control group definition.

22 THE COURT: What?

23 MS. WUERTZ: Consistent with the control group
24 definition, your Honor.

25 THE COURT: Mr. Nitze, what's your perspective? Stay

01I3JAVC

1 where you are.

2 MR. NITZE: Thank you, Judge. I largely share the
3 perspective Ms. Wuertz just gave. I think we're down to six,
4 maybe it's seven individuals that we're in disagreement about.
5 We've tried to reach compromise.

6 THE COURT: Let me understand what people do you want
7 to add that she doesn't want to add?

8 MR. NITZE: I can list them by name and title if
9 that's --

10 THE COURT: Start. Take one at a time.

11 MR. NITZE: Jamie Dimon.

12 THE COURT: He's the chief. Was he involved in the
13 deal?

14 MR. NITZE: Yes.

15 THE COURT: Ms. Wuertz?

16 MS. WUERTZ: Your Honor, he had one meeting with
17 Ms. Javice early on July 7.

18 THE COURT: He is a boss. I think you should include
19 him.

20 MS. WUERTZ: Your Honor, I think that --

21 THE COURT: I know it's delicate. It doesn't mean he
22 is going to be a witness. But his documents are fair game.

23 MS. WUERTZ: We're happy to do so, your Honor. We
24 think he falls outside of the definition your Honor was trying
25 to get at as people who were truly involved.

01I3JAVC

1 THE COURT: He's in control of the control. Nobody
2 was higher in the company, and he was involved in this deal. I
3 saw his name in the complaint.

4 MS. WUERTZ: He had a meeting with Ms. Javice. That's
5 correct.

6 THE COURT: So he's included.

7 MS. WUERTZ: Yes.

8 THE COURT: Next?

9 MR. NITZE: Next we would put Lisa Neunder, your
10 Honor.

11 THE COURT: What's his name?

12 MR. NITZE: Lisa and her last name is Neunder.

13 THE COURT: What was her position?

14 MR. NITZE: She was a vice president of partnership
15 integration. She worked during diligence, after diligence,
16 communicated to corporate development and marketing teams about
17 the users, she was integrally involved in this process, and had
18 some decision making authority. So we view her as part of
19 control group.

20 THE COURT: The integration aspect I've already
21 disallowed. So, but you're saying she also took part in the
22 due diligence before the transaction?

23 MR. NITZE: Yes. I say "integration," I should use a
24 different word. As the company's dealing with the marketing of
25 the user base, the sort of core piece that your Honor put into

01I3JAVC

1 the -- as a set that's included, she is responsible for
2 communicating as kind of a liaison from the ground to higher
3 up. And she's sort of vetting the uses of Frank data.

4 It is directly germane to this user list, user base
5 issue.

6 THE COURT: Ms. Wuertz.

7 MS. WUERTZ: Your Honor, we think that really
8 overstates Ms. Neunder's involvement. She had very little to
9 no involvement in diligence. She came in post-merger, and
10 she's really effectively a project manager, so she helped
11 marshal resources, she helped try to encourage --

12 THE COURT: Did she enter the situation after the
13 transaction was over?

14 MS. WUERTZ: Your Honor, that's my understanding. She
15 sort of got a hand off from the corporate development team. So
16 she joined --

17 THE COURT: So the only potential relevance she might
18 have is she wanted to market in such a way, and she found out
19 she couldn't because the customer base was not there.

20 MS. WUERTZ: That wasn't her role. She didn't decide
21 whether to market or not. She helped oversee the folks who
22 were doing that work who we agreed to add to the list.

23 THE COURT: I rule for you on her. She's not part of
24 the group.

25 MS. WUERTZ: Thank you, your Honor.

01I3JAVC

1 THE COURT: Next?

2 MR. NITZE: Your Honor, if I might take one step back.
3 We're --

4 THE COURT: She's probably redundant anyhow. You
5 probably have four people ahead of her.

6 MR. NITZE: It is a losing proposition to fight you on
7 her. We're talking here about Rule 17 and undue burden, and
8 four custodians who our clients -- or five custodians -- have
9 reason to believe are deeply involved.

10 THE COURT: I understand that, but I'm going to assess
11 burden as a whole. I'm already substantially burdening Chase.
12 So it's not a matter of marginal or incremental burden. It is
13 an overall burden. You've got other people, I'm sure. We
14 don't need her.

15 MR. NITZE: I'm going to turn it to Mr. Buckley who
16 wants to advance some names as well.

17 MR. BUCKLEY: Yes, your Honor. Ravi Govindaraju, who
18 is the head of product and digital financial management. She
19 was also Mr. Amar's supervisor at a certain point of time and
20 was intimately involved in operating Frank post-merger,
21 including assessment of which users Frank could market to.
22 Frank's true or marketable user base.

23 MS. WUERTZ: Your Honor, in our view Mr. Govindaraju
24 was brought in, he was brought in post-merger, after a few
25 months that Frank had been operating. He was brought in

01I3JAVC

1 between Ms. Javice and Mr. Amar, and their ultimate supervisor,
2 Ms. Divilek, and brought in really more of a mentoring role to
3 help Frank set business goals, to help them understand how to
4 sort of integrate at Chase, how to work things at Chase. He
5 was not again sort of hands on, providing his views on who
6 should be marketed to.

7 THE COURT: I take your point and I rule for you,
8 except I have a certain reservation of how the government is
9 going to prove that the names that Morgan bought really weren't
10 there. And the data sets that they bought weren't really
11 there. So, it's hard to make a ruling on individuals unless I
12 know more from the government. And you'll enlighten me.

13 MS. McLEOD: Yes, your Honor.

14 THE COURT: Dina McLeod.

15 MS. McLEOD: Yes, your Honor.

16 So, in terms of the synthetic data set, which is one
17 of the subjects of the complaint, first of all, actually I
18 don't know that there is actually a dispute that those people
19 don't exist. I've never heard the defendants say, either in
20 this case or in their civil case, that in fact, those were real
21 people. So there actually might not be a live dispute.

22 THE COURT: Say that again? I didn't follow that
23 point.

24 MS. McLEOD: So --

25 THE COURT: They're not people within the data sets

01I3JAVC

1 that were bought, right?

2 MS. McLEOD: So there's a couple of data sets, which
3 makes it kind of confusing. But, there was one set of data
4 which Frank provided to JPMorgan Chase which was meant to
5 represent their users, and it had 4.2 five million rows, and
6 each of the rows was meant to be a user of the Frank website.
7 In fact, that data was synthetic data, so these people were
8 made up. It was made up data.

9 THE COURT: It was fake.

10 MS. McLEOD: Yes. So that's one set of data, and as I
11 said, I actually --

12 THE COURT: That was exposed post-merger, right?

13 MS. McLEOD: Correct.

14 THE COURT: So, I need to know the witnesses who will
15 be used to prove that.

16 MS. McLEOD: So, in terms of how JPMorgan Chase
17 eventually uncovered the synthetic data set, they uncovered
18 that by looking at essentially the marketing lists. They tried
19 to do a marketing campaign with these various lists of users
20 that Javice and Amar provided to the JPMorgan Chase marketing
21 team, and the marketing campaign didn't work out. That's sort
22 of how the scheme started to unravel, because people were
23 confused.

24 I'm not sure, and we're not taking -- the government
25 doesn't have a position on these particular individuals. This

01I3JAVC

1 is between JPMorgan Chase and the defendants. But, I don't
2 know that, I don't know that Mr. -- that Ms. and I missed the
3 fullness of her last name, whether the head of product --

4 THE COURT: Mr. Buckley, give us that name again.

5 MR. BUCKLEY: Ravi Govindaraju. It is a mister. I
6 misspoke.

7 THE COURT: It might be good to spell it.

8 MR. BUCKLEY: Sure. G-O-V-I-N-D-A-R-A-J-U. And your
9 Honor, I don't want to interrupt Ms. McLeod, but I'd like to be
10 heard further on the relevance.

11 THE COURT: You'll be heard.

12 MR. BUCKLEY: Excuse me, your Honor?

13 THE COURT: Let her speak and then you'll be heard. I
14 might rule for you without hearing from you. You wouldn't mind
15 that.

16 MR. BUCKLEY: Certainly not.

17 MS. McLEOD: To cut to the point, I don't know at this
18 point that we would call Mr. Govindaraju to prove that this
19 data set was false. I'm not sure as to the synthetic data set,
20 he certainly would not be the witness we would call.

21 THE COURT: My question though has to do with this
22 issue. I just ruled for two people involved in marketing,
23 however fancy the names are, that they are out of the control
24 group. But, now that I speak with you, it seems to me that
25 these people are necessary because that's how the fraud was

01I3JAVC

1 uncovered.

2 Who is shaking heads? Who is nodding his head up and
3 down?

4 MR. KOBRE: That was me.

5 THE COURT: Do you think that would help me?

6 MR. KOBRE: No.

7 THE COURT: Then don't do it.

8 So I think from what you say, I need to be more
9 liberal on this.

10 MS. McLEOD: So again we don't -- we don't have a
11 position. I think this is a very fact intensive --

12 THE COURT: I am asking you to be helpful.

13 MS. McLEOD: In terms of being helpful, I don't think
14 that these people are the ones who are the closest to the
15 ground on marketing. That said, I don't want to say that they
16 had no involvement in marketing, because I'm not sure.

17 THE COURT: How many marketers do you want, Mr. Nitze
18 and Mr. Buckley?

19 MR. NITZE: We'd have to put our heads together about
20 the number, but these five or six people we're talking about,
21 all of them had some touch point on this aspect.

22 Perhaps Ms. McLeod has articulated it better than I
23 was. This is a core part of the case.

24 THE COURT: Who is reporting to whom? I don't want
25 you to get all the bits and pieces on the low guys. I want you

01I3JAVC

1 to focus on the big guys because that's where the reporting
2 would be, and you get those guys, you've got the whole story.

3 MR. NITZE: It's a big team. There is 1,000 of these
4 people running around on it. The control group is 25 people,
5 intimately involved. We've pared down to less than a half a
6 dozen in dispute, for a bank that says it's already collected
7 all the data. We're talking about running some search terms
8 and giving us some materials. And each of them, I can tell you
9 their titles, they all have fancy titles, they are all on the
10 communications, they're all guiding this project forward.

11 MR. BUCKLEY: Judge, if I can add to Mr. Nitze's
12 presentation there, we're asking for seven additional people
13 that we have identified as the core personnel.

14 THE COURT: One minute.

15 MR. BUCKLEY: Sure.

16 THE COURT: Go ahead.

17 MR. NITZE: Kelley Reichert is one of the people we're
18 asking for, executive director and head of consumer bank
19 acquisition marketing.

20 THE COURT: Do you have a list?

21 MR. NITZE: We have a list.

22 THE COURT: Does Ms. Wuertz have the list?

23 MR. NITZE: She has the list.

24 MS. WUERTZ: Yes, your Honor.

25 THE COURT: Does Mr. Buckley have the same list?

01I3JAVC

1 MR. NITZE: May I approach?

2 THE COURT: Absolutely.

3 MR. BUCKLEY: Just while we're waiting to hand up the
4 list, I wanted to address one item that came up in Ms. McLeod's
5 presentation.

6 THE COURT: I need Ms. Wuertz's attention.

7 MR. BUCKLEY: Certainly, Judge.

8 THE COURT: We'll mark this as Exhibit A to this
9 argument, January 18, 2024.

10 So where should I look, what numbers?

11 MR. NITZE: I'm going to tell you the numbers that are
12 in dispute.

13 THE COURT: Okay.

14 MR. NITZE: Number 4, Ravi.

15 Number 5.

16 Number 6, sorry. You've already ruled on 6. I don't
17 think you ruled on 6.

18 THE COURT: Give me the whole list. Give me what you
19 want.

20 MR. NITZE: The names in dispute are 4 -- this is at
21 the bottom list, the list of 16. It says "current list."

22 THE COURT: Yes.

23 MR. NITZE: And the names in dispute are 4, 5, 6, 7,
24 9, and 16. Those are the remaining names in dispute.

25 THE COURT: Okay. Now give me a moment just to look

01I3JAVC

1 at this.

2 MR. NITZE: And 8 was in dispute, Dimon also.

3 THE COURT: I ruled on Dimon. Right?

4 MS. WUERTZ: You did, your Honor. And I don't know if
5 you're revisiting your rulings on Ms. Neunder and --

6 THE COURT: No, Dimon's in.

7 I think, Ms. Wuertz, there is justification for some
8 of these names, but redundancy with all the names.

9 MS. WUERTZ: Yes, your Honor.

10 THE COURT: It's not clear to me from this list who is
11 the overall supervisor in this group.

12 MS. WUERTZ: Not all of these individuals fall along
13 neat reporting lines. I'd like to point out that so,
14 Mr. Govindaraju, for example, has nothing to do with marketing,
15 so he would not be in the marketing bucket. And Ms. Neunder
16 also is not in marketing. Her job title has to do with
17 integration. So she's again really a project manager for
18 integration, not someone who would have been involved in the
19 marketing decisions.

20 Mr. Mark Goldstein, who defense has actually agreed to
21 remove, he was really the one in charge of the marketing
22 campaign that Ms. McLeod spoke about, which is why he was on
23 our list originally.

24 But there are other individuals such as Keona
25 Drakeford who were involved in marketing as well.

01I3JAVC

1 MR. NITZE: And your Honor, this is Mr. Nitze if I
2 might. I think part of the reason I come back to burden is
3 just if there is some redundancy in a context like this, we are
4 talking about a very well-resourced bank searching data for
5 just over a dozen custodians. If we have some redundancy as we
6 defend ourselves against criminal charges, that is hardly a
7 redundancy that constitutes a major burden with respect to Rule
8 17.

9 THE COURT: Maybe yes, maybe no.

10 I want to get a better understanding how the reporting
11 lines went. It looks from the title that Govindaraju shouldn't
12 be searched. I don't understand how a digital product manager
13 needs to be searched.

14 MR. BUCKLEY: Did you say should not be searched?

15 THE COURT: Should not.

16 MR. BUCKLEY: May I be heard on that, Judge?

17 THE COURT: Yeah.

18 MR. BUCKLEY: I think I misheard your Honor. You said
19 Mr. Govindaraju should be searched?

20 THE COURT: If I give you these six names, 4, 5, 6, 7,
21 9, and 16. Would that satisfy you?

22 MR. NITZE: The ones that are in dispute in addition
23 to the ones that are not in dispute, yes.

24 THE COURT: What is not in dispute?

25 MR. NITZE: Everybody else. They've agreed to the

01I3JAVC

1 rest. I've given you the numbers for the custodians that are
2 now in dispute. The others were on their list.

3 THE COURT: Morgan proposes 10. And you defendants
4 propose 11. Are they the same 10 and 11?

5 MR. NITZE: No. The bank proposed 10, we have taken
6 one out who the bank said they've already given us much of
7 their data, and we proposed an additional seven to make a total
8 of 16.

9 And so, we have the nine that they've initially agreed
10 to, and then the seven. You've ruled on Dimon, that leaves the
11 six numbers that I gave to your Honor that we're asking to move
12 from 10 to 16, which strikes us again, in the context of a
13 criminal case, six custodians to search for, if there is a
14 little redundancy, what is the harm? It won't come into the
15 evidence, the jury won't learn about it, it is hardly a burden
16 for this bank that has an army of attorneys and others working
17 for it to search for this data.

18 THE COURT: 15 in all.

19 MR. NITZE: 16 total.

20 THE COURT: 16 in all. It's actually more than I
21 envisioned.

22 MS. WUERTZ: Your Honor, if I may, I think there is a
23 lot of duplication. Because in addition, when we proposed our
24 list, we proposed who we thought were going to be the people
25 closest to the transaction who would not be duplicative of one

01I3JAVC

1 another, and there are a number of people on our list that the
2 defendants then agreed to, to add up to 16, who are duplicative
3 in light of some of the individuals that they've added.

4 THE COURT: So, help me out. Of 10 custodians, which
5 ones are not of interest to the defendants?

6 MS. WUERTZ: They're willing to have them all except
7 for Mr. Goldstein.

8 MR. BUCKLEY: Who we agreed to eliminate, Judge, to
9 reduce redundancy.

10 THE COURT: Who of the defendants' list do you object
11 to?

12 MS. WUERTZ: Your Honor, we object to everyone except
13 for Ms. Divilek, Mr. Adelsberg, and Ms. Drakeford, who are also
14 on our list, in the interest of filling out the control group.

15 THE COURT: Who is on your list? Divilek?

16 MS. WUERTZ: Adelsberg.

17 THE COURT: Number two.

18 MS. WUERTZ: And Drakeford. So they are the three who
19 are in shading on that combined list.

20 THE COURT: Number 3. Drakeford. Okay.

21 MS. WUERTZ: That's correct.

22 MR. NITZE: Really. It is the six numbers I gave are
23 the ones in dispute, your Honor. The ones that the defense
24 wants, and that JPMorgan has said are redundant.

25 It is very difficult I would think for the Court

01I3JAVC

1 sitting here with these titles and the different overlapping
2 work streams to make a precision judgment about which ones were
3 actually the most involved and likely to have the
4 communications and evidence most relevant to the defense which
5 is ultimately what we're doing here. Not sort of formalizing
6 org charts.

7 So with that in mind, we struggle to see the harm in
8 six additional custodians.

9 THE COURT: I know. You made the point. I'm looking.
10 So on the defendants' list that was given to Chase, there are
11 only two, Lorraine Hansen and Neil Seideman, who are not
12 included in the bottom list.

13 MS. WUERTZ: Lorraine Hansen is also included in the
14 bottom list. There is only one that they removed from their
15 original list.

16 THE COURT: Hansen is included you said. Yes. Right.
17 Correct. So they've removed Seideman.

18 MS. WUERTZ: That's correct, your Honor.

19 THE COURT: And they wanted seven more.

20 MR. BUCKLEY: Not to pile on, but it is --

21 THE COURT: I need a couple minutes. Let me take a
22 few minutes.

23 (Recess)

24 THE COURT: Be seated, please. So what I've done is
25 compare the defendants' wish list to the descriptions found in

01I3JAVC

1 Exhibit B to the defendants' opposition. And on the basis of
2 that, I believe that numbers 4, 6, and 9 would be in the
3 control group, and the rest not.

4 MR. NITZE: So if I understand your Honor, it is the
5 group that is uncontested, plus Dimon, and then 4, 6, 9, so
6 Ravi, Jameson, and Kelley.

7 THE COURT: Yes.

8 MR. NITZE: Understood.

9 MR. BUCKLEY: Judge, if I could just address what is
10 on the defendants' list as number 7, Lorraine Hansen.

11 THE COURT: Yes.

12 MR. BUCKLEY: We think that she is critical to
13 Mr. Amar's defense. If your Honor recalls, the main allegation
14 against Mr. Amar is the post-merger coverup. And Lorraine
15 Hansen in her role was, among other things, responsible for the
16 data list assessment. So, it goes directly to the question of
17 who said what.

18 THE COURT: I'll give you Hansen. She's described as
19 having worked on the deal and marketing plan during diligence
20 and the deal review. So she would have been in a position to
21 know what was the set of data that Chase bought. Later, Hansen
22 participated in business unit reviews, assessing the status of
23 Frank operations, and marketing strategies and in the
24 post-merger analysis of Frank's data.

25 I recognize that this is defendants' descriptions.

01I3JAVC

1 But, giving the defendants the benefit of the doubt, we'll
2 include Hansen, number 7 as well. So 4, 6, 9 and 7.

3 MS. WUERTZ: If I may be heard on just one point.

4 THE COURT: Yes.

5 MS. WUERTZ: If your Honor is going to add
6 Ms. Reichert, we believe that renders Mr. MacDonald and
7 Mr. Goodman duplicative. And so we would propose --

8 THE COURT: Who?

9 MS. WUERTZ: Mr. Goodman and Mr. MacDonald.

10 THE COURT: I didn't include Goodman.

11 MR. NITZE: Those are in the consent list, your Honor.

12 THE COURT: She wants to take them off.

13 MS. WUERTZ: I guess then if you could clarify, your
14 Honor. So, the control group is --

15 THE COURT: The reason you want to take Goodman off is
16 because he's described as a managing director and head of
17 product consumer banking, and it doesn't seem from that
18 description that he had anything to do with the user base.

19 But let me see how he is described in the motion.

20 MR. NITZE: He led --

21 THE COURT: I've got to read here. It says Goodman
22 led the product work stream and diligence.

23 MR. NITZE: He's critical.

24 THE COURT: It looks like he is a coordinator and in
25 that way he has a lot of information. I think he should be in.

01I3JAVC

1 You don't have to argue everything. Sometimes I get you
2 without arguing.

3 So Goodman is in. Anything else?

4 MR. BUCKLEY: Just want to clarify your ruling.

5 THE COURT: I'm with Chase now.

6 MS. WUERTZ: So, your Honor, just to clarify. So,
7 from that current list that originally had 16 names, you are
8 not including Ms. Colbert, you're not including Ms. Neunder.
9 But you are including everybody else. I wanted to make sure I
10 have that correct.

11 THE COURT: You took out Seideman.

12 MS. WUERTZ: I'm sorry, your Honor. I'm looking at
13 the very bottom list.

14 THE COURT: This is confusing because there are a lot
15 of lists.

16 MS. WUERTZ: Yes, your Honor.

17 THE COURT: I think we took out Seideman, so in the
18 defendants' proposed 10 custodians, we're taking out number 5,
19 Maria Colbert; number 8, Lisa Neunder; and number 10, Neil
20 Seideman.

21 MR. NITZE: In the current list at the bottom.

22 THE COURT: We're adding in the bottom list, number 4,
23 Ravi Govindaraju; number 6, Jameson Troutman; number 7,
24 Lorraine Hansen; number 9, Kelley Reichert.

25 Do we have agreement?

01I3JAVC

1 MR. NITZE: I think if I understand it, please tell me
2 if I'm wrong, you have a set of custodians --

3 THE COURT: It's like herding cats.

4 MR. NITZE: I think we're down to 14 custodians total.
5 You have cut from the list, there is a list of nine that we
6 agreed to, and then we wanted seven more. And you've trimmed
7 those down, you told us the numbers that are in.

8 THE COURT: You know what, you and Ms. Wuertz and
9 Mr. Buckley, make a list. Take a piece of yellow paper, make a
10 list. And we'll put that on the record and that will be the
11 agreed list.

12 MR. NITZE: Okay.

13 (Counsel conferring)

14 THE COURT: That will be exhibit B. This is the
15 agreed list of the identities of the control group whose files
16 have to be searched according to the criteria set yesterday.
17 There are 14 names.

18 I'll give Exhibit B to the reporter and ask that it be
19 bound up with the record.

20 Next we have to decide --

21 MR. BUCKLEY: Before we move on, just one additional
22 point. With regard to the due diligence meetings, while we
23 have received PDF versions of sanitized notes of those
24 meetings, we have not received any of the underlying notes. It
25 is possible that certain of the 14 individuals that your Honor

01I3JAVC

1 just identified may be some of the note takers, but if we don't
2 find the realtime notes in the course of this search, that is
3 still an issue that remains in play. It goes to the point that
4 your Honor made --

5 THE COURT: We assigned topics, and if there is a
6 development of information within a topic, it has to be
7 produced, the beginning and the end.

8 MR. BUCKLEY: Understood. Thank you, Judge.

9 THE COURT: Unless it's privileged.

10 Now the next thing I want to know is when production
11 of documents.

12 MS. WUERTZ: With the expansion of the list, we had
13 originally estimated something like three to four weeks for
14 production, and an additional two weeks for the privilege log.
15 We'd like to ask for a couple more weeks, so to finish our
16 production by let's say March 15, and then privilege logs by
17 the end of March.

18 THE COURT: The proposal is the production of
19 documents will be made by March 15, and the comprehensive and
20 complete privilege log by March 29.

21 Are defendants satisfied? Is the government
22 satisfied?

23 MR. NITZE: Yes, your Honor.

24 MR. BUCKLEY: Yes, your Honor.

25 MS. McLEOD: That's fine, your Honor.

01I3JAVC

1 THE COURT: Yes. Okay. I adopt those dates.

2 The next thing we need to do is to work out a
3 procedure for challenges. So, how much time, after JPMorgan
4 Chase produces a complete privilege log, do you need so set up
5 challenges? Mr. Nitze?

6 MR. NITZE: A month?

7 MR. BUCKLEY: Just so your Honor understands, the
8 privilege logs are dozens, if not hundreds, of pages with
9 thousands of individual entries.

10 THE COURT: April 30 defendants will -- this doesn't
11 have to be filed, the privilege log should be filed. The
12 challenges should go to Chase directly, and then by May 16, I
13 would like to be filed a modified privilege log which would
14 reflect things that are removed from privilege because of
15 agreement, leaving only the disputed items for me to deal with.

16 I shouldn't say a modified privilege log. A privilege
17 log from which documents that are agreed to be produced has
18 been removed, and on which challenges by defendants are made.
19 And that will be done by May 16.

20 MS. WUERTZ: Your Honor, just to clarify, what about
21 entries where there is no dispute? Do you want just a list of
22 challenged entries?

23 THE COURT: I think if you give me a whole privilege
24 log, and have another column for objections by defendants.
25 Mr. Buckley, Mr. Nitze will get together with their teams, and

01I3JAVC

1 come up with a complete list of challenges. And then you
2 should work it out. Try to work it out.

3 They have to set their challenges to you on April 30.

4 MS. WUERTZ: Yes, your Honor.

5 THE COURT: It does not have to be a filed document.
6 May 16 will be a filed document, it will be a privilege list
7 that removes everything that the parties agree is producible,
8 and shows in another column the objections and very brief
9 reasons for the objections by defendants. And that has to be
10 filed May 16.

11 MS. WUERTZ: Thank you, your Honor.

12 THE COURT: I will set a hearing date or dates with a
13 procedure following that I'll set a date for, but I may have a
14 trial going on at which time I'll have to adjourn the date.

15 So May 30 at 2:30 we'll have the sampling procedures I
16 mentioned yesterday. That is, when all the privilege documents
17 will be brought into the courthouse, defendants will be able to
18 sample. I think a reasonable sampling number might be 15, but
19 you can push me on that or each other. And different
20 categories, I can make rulings and then you can apply them.
21 That will be done May 30 at 2:30.

22 I think that completes what we have to do with the
23 log.

24 And now with production of documents being made on
25 March 15, I'd like to have a proposed motion schedule.

01I3JAVC

1 MS. McLEOD: Your Honor, I think the parties are very
2 close to a proposed schedule on almost all pretrial dates,
3 including, for example, motions in limine. We were very close
4 prior to the conference. If we could have just have a couple
5 minutes to confirm.

6 THE COURT: Yes.

7 (Counsel conferring)

8 MS. McLEOD: Okay, your Honor. We are ready to go.

9 THE COURT: Okay.

10 MS. McLEOD: All right. We have one issue that is in
11 dispute, but I'll start with the many dates that we are agreed
12 on.

13 So for the motion schedule, April 5 for defendants'
14 Rule 12 pretrial motions.

15 April 30 -- sorry. This is a privilege related issue.

16 May 3 for government response.

17 May 20 for defendant replies.

18 June 15 for government and defense expert disclosures
19 as for case in chief.

20 July 15, supplemental expert disclosures, if any.

21 September 13, government preliminary exhibit list and
22 witness list and 3500 material.

23 September 20, defendant preliminary exhibit list.

24 September 27, motions in limine, request to charge,
25 and voir dire.

01I3JAVC

1 THE COURT: Start with June 15, please.

2 MS. McLEOD: Go back to June 15?

3 THE COURT: Yes.

4 MS. McLEOD: June 15, expert disclosures.

5 July 15, supplemental expert disclosures, if any.

6 THE COURT: Why do you need those?

7 MS. McLEOD: The defendants had a concern that they
8 might want different experts based on any government experts.

9 THE COURT: So simultaneous submissions of experts on
10 June 15, and supplements on July 15?

11 MS. McLEOD: Correct, a month later.

12 THE COURT: Supplements being in the substantive
13 report as well?

14 MS. McLEOD: I'm sorry, your Honor?

15 THE COURT: Meaning substantive additions as well and
16 modifications.

17 MS. McLEOD: I think by supplemental expert -- yes. I
18 think, yes, or any new expert that needs to be disclosed based
19 on the other parties' expert disclosures.

20 THE COURT: All right.

21 MS. McLEOD: September 13, the government's
22 preliminary exhibit list, government witness list, and
23 government's 3500 material.

24 September 20, defendants' preliminary exhibit list.

25 September 27, motions in limine, request to charge,

01I3JAVC

1 and voir dire.

2 October 9, oppositions to motions in limine.

3 THE COURT: October when?

4 MS. McLEOD: October 9.

5 THE COURT: Yeah.

6 MS. McLEOD: Then October 15 is the final pretrial
7 conference, which has already been set by the Court.

8 THE COURT: Yes.

9 MS. McLEOD: Then October 28 is the trial date.

10 THE COURT: Yes.

11 MS. McLEOD: And the parties have agreed that the
12 defendants will disclose the defense witness list and any 26.2
13 statements to the government 10 days before the close of the
14 government's case in chief.

15 THE COURT: How will they know what the close date is?

16 MS. McLEOD: It will be based on the government's
17 projection as to how far we are out. But that was what the
18 defendants proposed, and the government is okay with that, if
19 that's how they want to do it.

20 THE COURT: It's not something I can implement. So if
21 we're going to start trial on the 28th, why don't you do three
22 weeks in for the defendants' list.

23 MS. McLEOD: Okay. Let me look at the calendar. So I
24 think that would take us to November 18th.

25 THE COURT: Let's do November 15.

01I3JAVC

1 MS. McLEOD: That schedule is all on consent between
2 the parties. And then we have one final issue which we would
3 need the Court's guidance on.

4 THE COURT: Okay.

5 MS. McLEOD: So, in the past, at conferences, in the
6 fall, the government had asked for a date on which the
7 defendant was to provide notice of any affirmative defenses,
8 including advice of counsel. And that was because we wanted to
9 resolve any issues well in advance of trial, because if there
10 is an advice of counsel defense, the government needs to
11 conduct discovery.

12 So, we proposed a date of February 12th, in part
13 because, as I believe that your Honor had noted at one of the
14 last conferences, the information needed as to the notice for
15 advice of counsel is subjective and would be known to the
16 defense now.

17 THE COURT: I'm not catching you. What's going to
18 happen on February 12?

19 MS. McLEOD: The government would propose the
20 defendants would provide notice of any affirmative defenses,
21 including advice of counsel, so that if need be, the government
22 can engage in discovery on those issues. Because as your Honor
23 knows, if there is an advice of counsel defense, then typically
24 the privilege is waived and the government is entitled to
25 discovery on what happened between counsel and the defendants.

01I3JAVC

1 And that process we would like to get started earlier rather
2 than later.

3 THE COURT: What's the defendants' proposal?

4 MS. McLEOD: The defendants propose after the hearing
5 as to the privilege logs, which is --

6 THE COURT: May 30.

7 MS. McLEOD: -- May 30, which I think is then pushing
8 us into the summer.

9 And the other thing I would just note on this is that
10 it is a little unclear what JPMorgan Chase has that would be
11 relevant to the advice of counsel defense in the sense that,
12 although correct me if I'm wrong, they would have, they have
13 communications from Matt Glazer, who was the general counsel.
14 But they do not, and have segregated communications from
15 counsel for the merger. And so, that will not even be -- that
16 is not going to be decided by then.

17 So, in the government's view, we should just get this
18 process started in order to get the ball rolling on this, and
19 to not have this prolonged discovery process and disputes
20 continuing into the summer as we're leading up to trial, and
21 we're trying to nail down what happened with counsel.

22 So that's the government's view. But the defendants'
23 position is that they need until after the hearing in order to
24 decide, and the government just disagrees.

25 THE COURT: I think you can give the list, they may

01I3JAVC

1 want to supplement it. I think the government should know the
2 affirmative defenses. You know what they are. I think the
3 government's right. February 12.

4 MR. NITZE: May I be heard on the question, your
5 Honor?

6 THE COURT: Yes.

7 MR. NITZE: With respect to advice of counsel, in
8 particular, the point the defense is making is that there's
9 going to be, potentially anyway, litigation over documents
10 withheld from our access on the basis of privilege, including
11 documents at the moment withheld on which our clients are
12 participants. And the scope of what is said, what is in those
13 documents, and their potential evidentiary value, has direct
14 relevance to whether we might or might not advance an advice of
15 counsel defense. So it's very hard for us to make that
16 judgment.

17 THE COURT: So you'll withdraw it.

18 MR. BUCKLEY: The problem is, your Honor, if the
19 government is going to contend that by providing notice of
20 advice of counsel three months before we even know what the
21 documents contain, and, you know, it's more than simply the
22 merits.

23 THE COURT: You're going to know the bulk of the
24 documentary production.

25 MR. BUCKLEY: But, your Honor, it pertains to the

01I3JAVC

1 documents that JPMorgan has withheld as privileged, and if the
2 government is going to assert that there's been a waiver by
3 virtue of asserting the advice of counsel defense, they are
4 going to be getting access to documents that neither my client
5 nor Ms. Javice --

6 THE COURT: Advice of counsel is not the advice that
7 Morgan got. It is the advice that Javice and Amar got.

8 MR. BUCKLEY: That's correct, Judge. But included in
9 those files are, as Ms. McLeod indicated, among other things,
10 communications with Matt Glazer that involve our clients. Matt
11 Glazer was the general counsel of Frank prior to the merger.

12 THE COURT: So?

13 MR. BUCKLEY: We don't have access to those
14 communications, and therefore cannot evaluate the scope of what
15 a waiver would entail, until we get access to the
16 communications.

17 THE COURT: And Matt Glazer is part of Chase?

18 MR. BUCKLEY: No, Glazer was Frank, your Honor.

19 THE COURT: So Chase is not involved.

20 MR. BUCKLEY: Chase owns Frank's files. So, Chase has
21 possession of all of those communications, and at least for the
22 time being has asserted privilege over them. So, neither of
23 our clients has access to the communications with Glazer
24 because they were on Frank's servers, which are owned by Chase.

25 MS. MCLEOD: But in part, because of the complexity of

01I3JAVC

1 the issues, that's one of the reasons why it makes sense to
2 start the process earlier, because there are complicated
3 questions of privilege. The government is really concerned
4 about having months of litigation rolling into the summer when
5 we could start this process now. As the Court knows, the
6 elements of an advice of counsel defense involve --

7 THE COURT: I adopt the February 12 date. And if it
8 gives defendants some trouble, they can make a move to relax
9 that date. But I don't think there is a need to relax it.
10 There may be a need to supplement, but not to relax.

11 February 12.

12 MR. NITZE: Your Honor, one final point at least from
13 Ms. Javice's perspective with respect to the schedule that
14 Ms. McLeod laid out. Ms. McLeod has agreed to this point, but
15 I wanted to put it on the record that the deadlines for defense
16 exhibits, witness statements, and so on, are necessarily
17 conditioned by the fact that a defense comes together in large
18 part based on what the government puts before the jury. And so
19 these are preliminary lists and such. But the defense would
20 reserve the right to adjust its defense based on the
21 government's case.

22 THE COURT: That's correct. Anything else?

23 Yes, Ms. McLeod?

24 MS. MCLEOD: I was just going to say that's correct,
25 your Honor.

01I3JAVC

1 THE COURT: Okay. All right. Have we excluded time?

2 MS. McLEOD: Yes. Time is excluded until the trial
3 date, your Honor.

4 THE COURT: So we have nothing more to do.

5 MS. McLEOD: From the government's point of view,
6 correct.

7 THE COURT: And defendants?

8 MR. NITZE: We agree, your Honor.

9 THE COURT: Excellent. Okay. Have a wonderful summer
10 of relaxation and vacation and so on.

11 MS. McLEOD: Thank you, your Honor.

12 (Adjourned)

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Custodian List

Exhibit B
1/18/2024

1. Jay Adelsberg
2. Snali Divilek
3. Keona Drakeford
4. Ravi Govindaraju
5. Jameson Troutman
6. Lorraine Hanson
7. Jamie Dimon
8. Kelley Reichert
9. Steve Goodman
10. David Katz
11. Ryan MacDonald
12. Alex Sweeney
13. Adam Spino
14. Leslie Wini Marri

JPMC Proposed 10 Custodians:

1. Jay Adelsberg – Managing Director, M&A
2. Sonali Divilek – Head of Digital Products & Channels
3. Keona Drakeford – Executive Director, CCB Marketing Analytics & Targeting
4. Mark Goldstein – Former Executive Director, Acquisition Marketing Strategy
5. Steve Goodman – Managing Director and Head of Product, Consumer Banking
6. David Katz – Chief Financial Officer of Chase Corporate
7. Ryan MacDonald
8. Alex Sweeney
9. Adam Shpiro – VP, Corporate Development
10. Leslie Wims Morris

Javice and Amar Proposed 10 Custodians:

1. Sonali Divilek – Head of Digital Products & Channels
2. Jay Adelsberg – Managing Director, M&A
3. Keona Drakeford – Executive Director, CCB Marketing Analytics & Targeting
4. Ravi Govindaraju – Managing Director, Head of Product – Financial Tools
5. Maria Colbert – Digital Product Manager
6. Jamie Dimon – Chairman and Chief Executive Officer of JPMorgan Chase & Co.
7. Lorraine Hansen – Chief Marketing Officer of Chase Consumer Bank
8. Lisa Neunder – VP, Partnership Integration
9. Kelley Reichert – Executive Director, Head of Consumer Bank Acquisition Marketing
10. Neil Seideman – Managing Director, Digital Channels, Growth
11. Jameson Troutman – Managing Director – Data/Analytics, and then Head of Product

Current List

1. Jay Adelsberg – Managing Director, M&A
2. Sonali Divilek – Head of Digital Products & Channels
3. Keona Drakeford – Executive Director, CCB Marketing Analytics & Targeting
4. Ravi Govindaraju - Managing Director, Head of Product – Financial Tools
5. Maria Colbert - Digital Product Manager
6. Jameson Troutman - Managing Director – Data/Analytics, and then Head of Product
7. Lorraine Hansen - Chief Marketing Officer of Chase Consumer Bank
8. Jamie Dimon - Chairman and Chief Executive Officer of JPMorgan Chase & Co.
9. Kelley Reichert - Executive Director, Head of Consumer Bank Acquisition Marketing
10. Steve Goodman - Managing Director and Head of Product, Consumer Banking
11. David Katz - Chief Financial Officer of Chase Corporate
12. Ryan MacDonald - Chief Marketing Officer, Managing Director, Head of Product
13. Alex Sweeney - Head of Partnerships and M&A, and M.D., Partnerships and M&A
14. Adam Shpiro - VP, Corporate Development
15. Leslie Wims Morris – M.D. and Head of Corp. Dev., Consumer & Community Banking
16. Lisa Neunder - VP, Partnership Integration